

RETURNING INJURED WORKERS TO SUITABLE EMPLOYMENT

Job Offers

The primary goal of the Office is to return injured workers to suitable employment either with their original employing agency or with a company in the private sector.

Return to Work Plan

- Employers should have a plan to return injured workers to suitable employment.
- Reemployment involves less wage loss.
 - The longer injured workers are out of work, the less likely they are to return



Injured Worker's Responsibilities

- To seek or accept suitable employment.
- To resume regular Federal employment if capable.
- To provide physician with information on any available light duty.
- To advise employing agency of limitations imposed by attending physician.
- To report efforts to obtain suitable employment, if requested by OWCP.

Employer's Responsibilities

- Authorize medical care.
- If alternative positions are available for a partially disabled employee, advise the employee in writing of specific duties and physical demands.
- Where no alternative position is available, advise the injured worker of any accommodations the agency can make.

Developing a Job Offer

- Section 10.506 of the CFR allows an employing agency to monitor the injured worker's medical care.
- Employer may contact the physician but **only** in writing.
- Employer may contact the injured worker at reasonable intervals for updated medical information regarding the injury.

Developing a Job Offer

- Employer must consider the physical or emotional restrictions placed on an injured worker due to the work injury as well as any concurrent, non-injury-related ailments.
- Agency personnel can request work restrictions directly from the physician, from the OWCP nurse, or OWCP.
- If work restrictions differ, OWCP will determine which are appropriate.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)



What Is HIPAA?

- HIPAA prohibits health providers from discussing or giving information to anyone without a patient release. This includes other physicians.



Does This Law Apply to OWCP?

- No, it does not apply to OWCP. Health providers are obligated to provide medical information to OWCP.



How Will This Law Affect the Employing Agency?

- This law may hinder the employing agencies from obtaining medical information directly from the injured worker's physician.
- If an injured worker does not sign a release, medical information regarding work tolerance limitations due to the employment injury may be obtained from OWCP.

How Will This Law Affect the Injured Worker?

- It is the injured worker's responsibility to provide medical evidence to support injury related disability.
- If the injured worker does not provide supporting medical documentation (whether HIPAA is involved or not), the employer is not required to pay COP.

Making the Job Offer

- Description of specific job duties to be performed
- Specific physical requirements of the position and any special demands or unusual working conditions
- The work schedule
- Organizational and geographical location of the job
- Date on which the job will first be available
- Date by which a response to the job offer is required
- Provide pay information including grade, step, and salary
- The job must be offered in writing and must be based on the medical restrictions.
- The job offer should not include information regarding the election of OPM benefits.

Requesting A Job Suitability Determination

- If the injured worker accepts the offered job, there is no need to request a job suitability determination.
- Generally, if the injured worker has performed a job for 60 days or more and is working the number of hours he/she is capable of working, this establishes that the job fairly and reasonably represents his/her wage earning capacity. It is not necessary for OWCP to make a determination concerning the validity or suitability of the offered job in these situations.

Once the Offer is Ready

- Return-to-work conferences are helpful in facilitating a return to work.
- If the injured worker accepts the position, return him/her to work.
- If the employee refuses the position, send a copy of the offer and the employee's refusal to OWCP for further action.

When the Injured Worker Accepts the Job

- The injured worker should take the following actions:
 - Notify employer of acceptance;
 - Contact the employer for a start date and time;
 - Notify OWCP of the return to work in order to avoid overpayment; and
 - Prepare for a finding of wage earning capacity after a return to work of at least 60 days.

OWCP Actions for a Refused Job Offer

- Determine if the job offer is valid**

- Is the job offer in writing?
- Is there a description of duties to be performed and the physical requirements of the job?
- Does it provide pay information including grade, step and salary?
- Does it state the organizational and geographical location of the job?
- Does it state the date the job is first available and the work schedule?
- Does it state the date by which the employee must respond to the job offer?

OWCP Actions for a Refused Job Offer

- Determine if the job offer is suitable
 - Compare the duties and the physical requirements of the job offer to the medical limitations in file.
 - Determine whether the injured worker is vocationally capable of performing the job.
 - Determine whether the kind of appointment is at least equivalent to that of the job held on the date of injury.

Job Offer Disqualifications

- A job which involves less than four hours of work per day where the injured worker is capable of working four or more hours per day will be considered unsuitable.
- A job which represents permanent seasonal employment will generally be considered unsuitable unless the injured worker was a career seasonal or temporary employee when injured. In locations where year-round jobs are scarce, however, a seasonal position may be considered suitable for an injured worker who previously held a year-round job. In either case, the job must reasonably represent the claimant's wage earning capacity.

Job Offer Disqualifications

- A temporary job will be considered unsuitable unless the injured worker was a temporary employee when injured and the temporary job reasonably represents the injured worker's wage earning capacity.
- Even if these conditions are met, a job which will terminate in less than 90 days will be considered unsuitable.
- If medical reports in file document a condition which has arisen since the compensable injury, and this condition disables the injured worker from the offered job, the job will be considered unsuitable (even if the subsequently-acquired condition is not work-related).

Finding of Suitability

- If the job offer is not suitable, OWCP will notify the employing agency and request that they modify the offer .
- If the job is deemed suitable, OWCP will
 - Phone the employer and confirm the job is still available; and
 - Write to the injured worker

Reminder: A finding of suitability will not be made on offers that are accepted by the injured worker and the treating physician.

Contents of Letter From OWCP to Injured Worker

- Job determined to be suitable.
- Job remains open to the injured worker.
- Injured worker will be paid compensation for the difference, if any, in salary.
- Injured worker has 30 days from the date of letter to either accept the job or provide an explanation of reasons for refusal.
- Advise of penalty provisions.

Acceptable Reasons for Refusal - Injured Worker on Agency Rolls

- The offered position is withdrawn.
- The injured worker found other work which fairly and reasonably represents his or her earning capacity.
- The medical evidence establishes that the injured worker's condition has worsened and is now disabled for the position.
- The injured worker provides evidence that his or her decision was based on the attending physician's advice and that such advice included medical reasoning in support of the opinion.

Acceptable Reasons for Refusal - Injured Worker on Agency Rolls

- The medical evidence establishes that the injured worker is unable to travel to the job because of residuals of the injury.
- The file documents a medical condition which has arisen since the compensable injury, and this condition disables the injured worker for the offered job.

Acceptable Reasons for Refusal - Injured Worker Not on Agency Rolls

- The injured worker will lose health insurance coverage by accepting the job.
- The injured worker is already working, and the job represents his or her wage earning capacity.
- Injured worker has moved, and a medical condition of injured worker or family member prevents return to area.

Unjustified Refusal

- The injured worker's preference for returning to original duty station when the offer is in another location.
- Greater financial gain.
- Spouse's employment.
- Personal dislike of the position offered or the work hours.
- Lack of potential promotion.
- Lack of job security.
- Retirement.
- Age.

Unjustified Refusal

- Previously-issued Loss of Wage Earning Capacity (LWEC) based on a constructed position where the injured worker is not working.
- Distance of the commute where the injured worker remained on the rolls of agency and moved way from commuting area.
 - Injured worker fails to provide medical supporting that the return move is prohibited
- Lack of medical evidence to support injured worker's statement he/she cannot tolerate duties.
- Personal reasons such as concerns of well being of children
- Spouse of a career military person subject to transfers.
- Injured worker continued to pursue part time employment held prior to work injury, and work does not represent Wage Earning Capacity (WEC).

Refusal of Job Offer

- OWCP will evaluate whether the reasons for refusal provided by the injured worker are valid or not. If not valid:
 - Advise the injured worker he/she has 15 days in which to accept the offer without penalty.
 - Advise the injured worker that no further evidence will be considered during the 15-day period.

Refusal of Job Offer

- If the injured worker does not return to work after 15 days, OWCP will prepare a formal decision which provides full findings of facts as to why the injured worker's reasons for refusing the job are deemed unacceptable and terminate compensation under Section 8106(c)(2) of the FECA.
 - Includes wage loss and schedule award benefits
 - Does not affect the payment of medical benefits
- This decision will not be modified even if the medical condition later deteriorates, and the injured worker claims a recurrence of total disability.

Refusal of Job Offer - JUSTIFIED

- If the refusal is deemed justified OWCP will notify both the injured worker and the employing agency.
- The injured worker will remain on the periodic compensation rolls with no change in benefits.

Refusal of Job Offer - Undetermined

- If it is not possible to determine whether an injured worker's reason for refusal is justified without further investigation of the issues, OWCP will:
 - Contact the employing agency again to verify that the offered job remains open to the injured worker
 - Contact the injured worker for clarification and set another 30-day deadline
- If the employing agency is unable to keep the job open during this period, OWCP must discontinue any further consideration of applying the sanctions for refusal of the offered job

Relocation Expenses

- Relocation expenses are payable only to injured workers who are no longer on the agency rolls.
- Some agencies have other relocation payment options available in addition to or in lieu of payment from OWCP.



Relocation Payments

- May be paid for relocation to a temporary job as long as it is expected to lead to a permanent assignment.
- Distance between the two locations must be at least 50 miles.
- Injured worker does not need to demonstrate financial need.

Relocation Advising the Parties

- The employing agency should request relocation benefits at the time that they send the job description to the district office so that suitability of the job and entitlement to payment of relocation expenses can be determined.
- The claims examiner must notify the injured worker with suitable job offer who meets the criteria for payment of relocation expenses of the provisions of Section 10.508 of the regulations.
- The supervisory claims examiner will review the claims examiner's recommendation for payment of relocation expense and advise the employing agency and injured worker of the decision.